IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32 (2)(b)

Description of case

Writ Petition No. 388 of 2004 (S/B)

Date of Decision 10th February, 2005.

For the approval of:

Hon'ble Chief Justice V.S. Sirpurkar.

Hon'ble Mr. Justice P.C. Pant.

- Whether the order/judgment should be sent to the reporters for reporting? (Yes)

-Whether the reporters be allowed to see the judgment? (Yes)

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IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 388 (S/B) of 2004

Lt. Col. Jagannath Singh Pathania (Retd.)
766, Indira Nagar,
Dehradun (Uttaranchal) ……. Petitioner

Vs.

1. Union of India,
   Through Secretary,
   Ministry of Social Justice
   and Empowerment,
   Shastri Bhawan,
   New Delhi.
2. Director in Charge
   Camp office,
   NIVH, 116 Rajpur Road,
   Dehradun (Uttaranchal) …… Respondents.

…….

Mr. Lalit Kumar, learned counsel for the petitioner.
Mr. V.B.S. Negi, Senior Standing Counsel, Union of India.

Coram: Hon'ble V.S.Sirpurkar, C.J.
Hon'ble P.C. Pant, J.

Dated: 10.02.2005

[Per Hon'ble Chief Justice]

1. This is writ petition challenging the order dated 08.04.2004 contained in Annexure P-7 bearing no. CRC/G/P/7 dt. 08.04.2003. That order is in the nature of communication by Director Incharge, one Dr. S.R. Shukla, which directs the petitioner to hand over the charge of his post to one Shri Manjeet Singh Saini in the afternoon of 08.04.2004, which was last working day of the week, 9th and 10th April, 2004 being gazetted holidays.

2. The petitioner is a retired military officer. He probably applied for the post of the Administrative Officer and was selected by a competent Selection Committee in the National Institute of Visually Handicapped. The communication of his selection is dated 05.03.2002, in which it has been specified that on the recommendation of the Selection Committee, the competent authority was pleased to offer him contractual appointment

for one year to the post of Administrative Officer in the scale of pay of Rs.8,000- 13,500 at Composite Regional Centre for Persons with Disabilities (CRC) at Sundernager. In para 3 of the said communication, it is specified that the contractual appointment would be initially for a period of one year and extendable on annual basis. It seems that the petitioner joined the post and by communication dated 10.04.2003, it was conveyed that the Competent Authority had approved of his continuation for further period of one year i.e. from 11.04.2003 to 10.04.2004. Very significantly, both these communications i.e. the first communication dated 05.03.2002 and another communication dated 10.04.2004 are signed by Dr. S.R.Shukla, Director Incharge, Composite Regional Centre for Persons with Disabilities, Sundarnagar.

3. It seems that ultimately since no extension was granted to him, he was directed to hand over the charge. The petitioner has treated this order dated 08.04.2004, by which he was directed to hand over charge to be termination order and challenges it on the ground that the termination order has been given by an authority, which was lower to the Appointing Authority. Learned counsel heavily relies on he Rules and more particularly Rule 7.22.a., wherein it is suggested that the Appointing Authority in respect of Group 'A' posts will be Chairman, Executive Council and in respect of posts under Group 'B', 'C' and 'D' posts would be Director. The argument further goes that since the communication dated 08.04.2004 is by Director Incharge, it is passed by the authority lower to the Chairman, Executive Council and, therefore, the termination is bad in law. The learned counsel further says that if the termination was bad, then the consequential reliefs must follow of continuation in the service as also of back wages.

4. As against this, the learned Senior Standing Counsel, Government of India, points us that the communication dated 08.04.2004 was not a termination order at all and was a mere direction to hand over the charge since the services of the petitioner were to continue till 10.04.2004 and since 9th and 10th of April, 2004 were gazetted holidays. The learned counsel for the respondents is at pains to point out that what is done is not

any termination of the service. Relying on clause 3(i) vide communication dated 05.03.2002, the learned counsel argues that this was purely a contractual appointment for one year and was extendable on annual basis. He points out that if it was not extended, there would be no question of any termination order being passed or for that matter any continuation in the service.

5. In our opinion, the petition is wholly misconceived. This was a contractual appointment, which was extendable on annual basis. The communication dated 05.03.2002 also conveys the recommendation of the Selection Committee and offer made by the Competent Authority. This communication has also been conveyed by the Director Incharge, CRC, Sundernagar. On that basis, the petitioner took his employment. It was clarified in this communication that the contractual appointment will be initially for a period of one year and extendable on annual basis. Accordingly, his services were extended by the order dated 10.04.2003, which communication also was signed by the Director Incharge conveying the approval of the Competent Authority. Therefore, this was also not the order by the Competent Authority. What was informed to him was the approval of the Competent Authority. Lastly, the order dated 08.04.2004 is also nothing but a communication by the Director Incharge, directing him to handover the charge. That is not a termination order. Since the extension was not granted by the Competent Authority, the handing over of the charge on 08.04.2004 would have been the most natural step. In our opinion, it was not necessary for the authorities first to pass any termination order because on 10.04.2004, the services of the petitioner would have automatically come to an end. Therefore, the contention of the petitioner that he was terminated by the authority inferior to the appointing authority, must fail.

6. Learned counsel thereafter argued that since the petitioner was a military man and since he was offered the service after his retirement, he should have ordinarily been allowed to continue till he reached the ordinary age of retirement in the civil service. We do not see any justification in

this argument. The petitioner had accepted a contractual appointment with the open eyes and there would be no question of his having any right to continue in the post in absence of the continuation order. Learned counsel further raised the doctrine of legitimate expectation. We do not see as to how that doctrine will apply in contractual appointment, which was purely a contractual service for one year and was extendable on annual basis at the discretion of the Competent Authority. Under such circumstances, there would be no question of application of doctrine of legitimate expectation. A decision was relied upon by the learned counsel of the Punjab and Haryana High Court in Dr. (Mrs.) S.K.Bhatia Vs. State of Punjab reported in 1997 (6) SLR (Punjab and Haryana) 39. The decision is in respect of appointment of the concerned person as Deputy Advocate General. We do not see as to how that decision is apposite. There the terms were altogether different. In the present case, the appointment was for a period of one year. Such terms of appointment were not present in that decision.

7. After the petitioner laid down his office as per the communication dated 8.4.2004, he seems to have made a representation to the Government of India and there appears to be communication dated 03.09.2004 wherein it is very clearly stated that the initial appointment of the petitioner was for one year. It was extendable on annual basis and accordingly was extended for one year. However, subsequent to 10.04.2004, the term was not extended. We think that this much is sufficient to hold that the petition has no merit.

8. The petition is dismissed.

(V.S.Sirpurkar, C.J.)

(P.C. Pant, J.)

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